

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHON DEJON ALEXANDER,

Plaintiff,

v.

AFSHIN ARYA,

Defendant.

No. 2:20-cv-02294-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

II. Allegations in the Complaint

At all times relevant to the allegations in the complaint, plaintiff was an inmate at the California State Prison-Sacramento. Plaintiff asserts that his doctor, defendant Afshin Arya,

1 stopped his pain medication and topical cream on July 18, 2018. ECF No. 1 at 3. More
 2 specifically, plaintiff contends that his pain medication of Gabapentin was stopped immediately.
 3 Id. As a result, plaintiff experienced pain and suffering and mental and physical anguish. Id.
 4 Plaintiff seeks monetary and punitive damages. ECF No. 1 at 4.

5 **III. Legal Standards**

6 Denial or delay of medical care for a prisoner's serious medical needs may constitute a
 7 violation of the prisoner's Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.
 8 97, 104-05 (1976). An individual is liable for such a violation only when the individual is
 9 deliberately indifferent to a prisoner's serious medical needs. Id.; see Jett v. Penner, 439 F.3d
 10 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.
 11 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

12 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439
 13 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other
 14 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the
 15 plaintiff must show a "serious medical need" by demonstrating that "failure to treat a prisoner's
 16 condition could result in further significant injury or the 'unnecessary and wanton infliction of
 17 pain.'" Id., citing Estelle, 429 U.S. at 104. "Examples of serious medical needs include '[t]he
 18 existence of an injury that a reasonable doctor or patient would find important and worthy of
 19 comment or treatment; the presence of a medical condition that significantly affects an
 20 individual's daily activities; or the existence of chronic and substantial pain.'" Lopez, 203 F. 3d
 21 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

22 Second, the plaintiff must show the defendant's response to the need was deliberately
 23 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act
 24 or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the
 25 indifference. Id. Under this standard, the prison official must not only "be aware of facts from
 26 which the inference could be drawn that a substantial risk of serious harm exists," but that person
 27 "must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). This "subjective
 28 approach" focuses only "on what a defendant's mental attitude actually was." Id. at 839. A

1 showing of merely negligent medical care is not enough to establish a constitutional violation.
2 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A
3 difference of opinion about the proper course of treatment is not deliberate indifference, nor does
4 a dispute between a prisoner and prison officials over the necessity for or extent of medical
5 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058
6 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of
7 medical treatment, “without more, is insufficient to state a claim of deliberate medical
8 indifference.” Shapley v. Nev. Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985).
9 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the
10 prisoner must show that the delay caused “significant harm and that Defendants should have
11 known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

12 **IV. Analysis**

13 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
14 which relief can be granted under federal law. Plaintiff does not indicate what serious medical
15 need he had that required an ongoing prescription for pain medication. Absent such information,
16 plaintiff has failed to establish the first prong of a deliberate indifference claim. See Jett, 439
17 F.3d at 1096. The allegations in plaintiff’s complaint only establish a difference of opinion about
18 the ongoing need for pain medication. This does not rise to the level of a constitutional violation.
19 See Toguchi, 391 F.3d at 1058; Sanchez, 891 F.2d at 242. For all these reasons, plaintiff’s
20 complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

21 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
22 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
23 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
24 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
25 § 1983 unless there is some affirmative link or connection between a defendant’s actions and the
26 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
27 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
28 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

1 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
2 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
3 complaint be complete in itself without reference to any prior pleading. This is because, as a
4 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
5 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
6 longer serves any function in the case. Therefore, in an amended complaint, as in an original
7 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

8 **V. Plain Language Summary for Pro Se Party**

9 The following information is meant to explain this order in plain English and is not
10 intended as legal advice.

11 The court has reviewed the allegations in your complaint and determined that they do not
12 state any claim against the defendant. Your complaint is being dismissed, but you are being
13 given the chance to fix the problems identified in this screening order.

14 Although you are not required to do so, you may file an amended complaint within 30
15 days from the date of this order. If you choose to file an amended complaint, pay particular
16 attention to the legal standards identified in this order which may apply to your claims.

17 In accordance with the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

19 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
20 shall be collected and paid in accordance with this court's order to the Director of the California
21 Department of Corrections and Rehabilitation filed concurrently herewith.

22 3. Plaintiff's complaint is dismissed.

23 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
24 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
25 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket

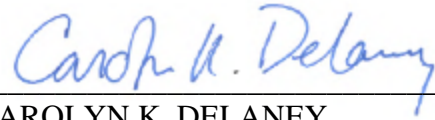
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number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: April 19, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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